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THESE ARE DRAFT MINUTES. THEY ARE CONFIDENTIAL AND RESTRICTED TO THE MEMBERS OF THE WORKING GROUP, THE DAILY MANAGEMENT COMMITTEE AND THE MANAGEMENT COMMITTEE. THEY ARE STILL SUBJECT TO APPROVAL OF THE CHAIRPERSON OF THE WORKING GROUP SUB-GROUP AND TO RATIFICATION BY THE WORKING GROUP SUB-GROUP AT ITS NEXT MEETING.

MINUTES OF THE SEVENTH MEETING OF WORKING GROUP 1 SUBGROUP 3 HELD AT THE WORLD TRADE CENTRE ON 27TH APRIL AT 08H30 TO 15H00

PRESENT : SEE ADDENDUM A

M B Webb (Convenor)
T E Motumi (minute taker)
A Schoeman (Secretary)

1. Convenor's opening remarks

The convenor opened the meeting and indicated to all delegates that it was the last meeting of the Sub-Group before CODESA II. The SG needed to come to conclusive agreements. He proposed that Item F (political neutrality of, and fair access to, State-controlled/statutory instituted media) be dealt with first, thereafter Minister Coetsee would lead on Item J - The Funding of Political Parties. This was to be followed by Prof Asmal's input dealing with Educative Campaigns.

1.2 The convenor further outlined the format of the required report to CODESA II: - the

agreements reached; matters requiring attention and how these were to be resolved before 07/05, when the report would have to be finalised.

2. Attendance and apologies

The following apologies were made :
Bophuthatswana Government - Mr Masilo
SACP - Mr Baleni
Ciskei Government - Mr Ndzondo

3. Adoption of the agenda

The agenda was adopted with the following amendments :

but Item 6.1.2 was deleted;

3.2 Item 6.3 was amended to read : "Arrangements to Implement Educative Campaigns."

4. Ratification of Minutes

4.1 Point 5.3.1 of the minutes of 21/04 should read : "...substantial support was expressed for" and not "substantial consensus."

5. Continuation of Discussion on Item F - (political neutrality of, and fair access to, State-controlled/statutory instituted media)

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CONVENTION FOR A DEMOCRATIC SOUTH AFRICA \

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3.1

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The Independent Body.

There was consensus that an independent, neutral body be established to regulate the telecommunications sector. There was also consensus that such an independent body be created in terms of an act of Parliament. ,

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Functions

There was consensus that an independent body would have as its principle functions :

5.2.1 The regulation of the utilisation of the electromagnetic spectrum, including the allocation of licenses and the determination of license conditions according to an agreed set of standards.

5.2.2 The appointment of a suitable structure to monitor the proper exercise of license conditions.

Powers

A document shall be prepared by the rapporteur, Mr Myburgh, from the papers submitted, listing all the powers from the papers submitted which such an independent body should have.

It was agreed that the powers of the Post Master General should be transferred to the independent body.

Name of Independent Body

The meeting agreed this will be discussed at a future meeting.

Constitution of independent body

The qualifications of members : Members of the Independent Body shall be South African citizens of merit who act in the public interest. Furthermore no board member should be an office bearer of any political organisation or have a vested interest in the film and broadcasting industries, or any other conflicting interest.

Board members should divest of any economic interest in the media and /or political office.

Regional, language, cultural and gender considerations need to be taken into account during

the nomination process. In addition to competent and widely respected persons, account shall

be taken of expertise in the following fields : News and journalistic affairs, broadcasting, education, technological, religious, business, legal, film, advertising, entertainment, culture, public relations.

Appointment procedures

There is consensus that organs of civil society be invited, inter alia by advertisement

in the
press, to nominate names to either CODESA or the interim structure, whichever is appropriate
at the time, bearing in mind the urgency of the matter, for purposes of preparing a short list
of names from which the board of the Independent body can be appointed.

Accountability and Finance

There is general agreement that the independent body shall be accountable to the executive of

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the interim constitutional authority provided that once a representative Parliament comes into being such a body shall be accountable to parliament or one of its standing committees, provided that the independence of such a body shall not be impinged upon in any way whatsoever.

The extent of the Independent Body's accountability shall be dependent upon the method of financing such a body. In this regard various methods are possible and are at present subject to consideration.

Licensing procedures conditions and standards

There was general agreement that the above matters should devolve upon the independent body.

SABC

As part of the negotiating process the issues of the reconstitution of the SABC and the monitoring of its present performance should be referred to the Steering Committee for a recommendation to the Working Group.

Complaints, Disputes and Monitoring

The Independent Body shall, with parliamentary approval by way of legislation, set up such structures as may be necessary inter alia .

1. for adjudicating disputes

2. for monitoring the efficiency of the licensee and to ascertain whether licensees comply with their licence conditions.

3. for investigating complaints and for giving effect to remedial actions.

Code of Conduct

The independent body shall lay down that standards to be complied with by licensed broadcasters (such standards could be included in a Code).

Individual Broadcasters shall compile a Code of Conduct to which they will have to comply and which could be made a condition of their licences.

Funding of Political Parties

There was consensus that the provision of the prohibition of Foreign Financing of Political Parties Act

No 51 of 1968 with regard to the receipt of foreign funds by Political Parties be suspended until a date

6 (six) months from the date of the general election in terms of the provisions of a negotiated new constitution for South Africa.

It was recommended that due to lack of time, the Steering Committee or Working Group sh

ould look

at the Items K, L, N, O, P, Q of the Terms of Reference. Various submissions were received dealing

with the aforementioned items, but they were not discussed.

8.

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The role of the international community:Assignment 2

It was decided to refer this matter to the WG1 plenary session for further discussion and action

ADDENDUM A

AFRICAN NATIONAL CONGRESS

BOPHUTHATSWANA GOVERNMENT

CISKEI GOVERNMENT

DEMOCRATIC PARTY

DIKWANKWETLA PARTY

INKATHA FREEDOM PARTY

INTANDO YESISWE PARTY

INYANDZA NATIONAL MOVEMENT

LABOUR PARTY

NIC/TIC

NATIONAL PARTY

NATIONAL PEOPLEâ\200\231S PARTY

SOLIDARITY PARTY

SOUTH AFRICAN COMMUNIST PARTY

SOUTH AFRICAN GOVERNMENT

TRANSKEI GOVERNMENT

UNITED PEOPLEâ\200\231S FRONT

VENDA GOVERNMENT

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K Asmal
P Maduna

M A Vilakazi
M B Webb

P Soal
D Smuts

T J Mohapi
M M Maekane

I Mars

S L Mthimunye
D P Mahlangu

M S Gininda
M J Mahlalela

I Kruger

M Moolla
M Shaik

G B Myburgh
L H Fick

A K Beesham
D Chetty

P I Devan
C Naguran

E Pahad

H J Coetsee
A J Engelbrecht

M Mpahlwa

M P Tladi
LL Mpya

Z C Nevhutalu
P J Nembambula

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XIMOKO PROGRESSIVE PARTY B M Tlakula
N M Mtsetwene

RAPPORTEUR : H J Bester

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ADDENDUM B

The following submissions were received :

1. Rapporteurâ\200\231s Report
2. African National Congress
3. Bophuthatswana Government

ADDENDUM C

Summary of the Discussion :

1.

The Dikwankwetla Party asked if the Independent Body should be a permanent one, as the Myburgh document suggests. The ANC, pointed out by definition, it has to be a permanent body. Mr Myburgh said it should be statutorily created.

The ANC said the issue was for the body to be independent, and for accountability, to be to parliament. The govt document outlines this (p.5, 3.2)

The SA govt said regulation depended on whether there would be a parliamentary supervisory capacity. Financing would have a wide ranging effect, like the width and depth of accountability. There cannot be a completely independent body accountable to the taxpayer. Regulatory empowerment would depend on this, the least powers the minister had, the better.

The convenor asked what would occur in the event the independent body made regulations offensive to government.

The ANC said there were direct configurations - as it stands, there is either direct reporting to the government, or through a body. The Minister must not be able to determine policy or interfere with electromagnetic waves.

The ANC said there was a fair amount of agreement, like on freedom of expression. There should be standards, and a need in the public or commercial sector. The importance of community broadcasting needs to be ensured. There would obviously be local content regulations, as well as looking at broadcast research. Creation of equal opportunities also needs to be a matter of policy.

The SA govt said certain functions had been outlined - but the issue of cross ownership needed to be limited.

The ANC said in working out basic rules, it needed to be put down as policy that one concern could not own the only station, and only newspaper in the same area or town. This must be enshrined in the Bill of Rights and constitution.

The DP said it was in favour of community radio, hence in its earlier submission this had been outlined. This however in the main referred to the radio - which would deal with the specific needs of a community. On the issue of cross ownership, there should be no monopoly on radio, television and newspapers.

The SACP said agreement should be reached on agreements on the independent body to have powers to examine and decide on cross ownership, not the Subgroup. The govt supported this proposal, and suggested progress on the matter.

On the name of the independent body, it was decided this was secondary to the principle

s and other
matters relating to it.

On the constitution of the independent body, the SA govt said if there was agreement on the statutory creation of the body, it would have legitimacy. It would be diverse, but the question to ask is whether valid interests would be awarded all role players or the community. The level of knowledge needed to be determined for interests to be represented. There should also be a decision whether the process is by election or nomination.

The ANC cautioned against experts taking decisions on sensitive issues. There must be criteria set, and

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Transkei govt and Dikwankwetla have clearly outlined this procedure.
The DP said there needed to be no qualification except being SAN.

The LP wanted to know the relationship of the Independent authority with the SABC and T BVC states.

In response, the convenor pointed out the independent body would issue licenses, and determine control

and cross ownership. It would not be deciding what may/may not be done. The main issue at this point

is who should be on the body definition of the clause "SA citizens of distinguished ability".

The DP said the qualification that is needed is SAN citizens of distinguished ability .
...acting in the
public interest.

There was support for the clause as couched by the DP, and it was adopted.

On appointment procedures, the ANC said there should be no appointments as in the case of court

judges, but there should be wide consultation, with the involvement of CODESA, as suggested by the
Transkei.

The LP cautioned that whilst it was agreeing with this, it should be noted there were people and
structures outside CODESA who also needed to be involved.

The SA govt stated it had problems on the issue of nominations, and wanted to know from whom
should they be invited. there needed to be a limitation.

In response the ANC said a nominating body could be identified, and thereafter place an advertisement
in the paper. The said nominating body would operate by consensus, and would not necessarily be
limited to the nineteen parties at CODESA. The other option is for an _ interim
govt/authority/administration.

The ANC went further to say if an interim structure is delayed, then option one(above) could be
seriously considered. The interim structure would work out its own decision making process.

The SACP said it should be added that in the absence of an agreement on an interim govt , then WG1
would have the right to nominate.

The convenor pointed that in the first instance, the civil structures should nominate, then interim
structures should put these in place, if not ready, then WG1SG3 could do this.

The govt said legislation could be passed to effect this during the current session of parliament. This
issue should not be linked to the unfolding process.

There was consensus that CODESA would appoint if interim structures were not in place by then.

On Accountability and Finance, the govt said funding by fiscus could be considered, the second option
would be through levying license fees, and finally, through a combination of the two. payment on
services could also be levied - this was a firm source of revenue.

On accountability, the govt was of the opinion the body should be accountable to parliament

ment through
select committee. This would be the minimum requirement, but if it is financed through
fiscus, then
accountability would be through parliament, and taxpayers's money. Its independence should not be
infringed upon.

The proposals on finance as put by the SA govt were broadly accepted. Other ways of funding were
to be determined later.

On Staffing, it was decided the issue would be determined by the independent body once it was in existence.

Ciskei proposed that licensing be determined by the independent neutral body.

The DP wanted the IBA to have jurisdiction over the TBVC states, and the govt said this would be so only if it is negotiated. This view of the govt was also supported by Bop.

The Ciskei said it expected all the proposals coming from the SG be implemented as soon as the body had been set up.

On the SABC and other the SA govt said the answer lay in how the SABC Board was founded - there needed to be independence, and this could be in the founding act. The DP proposal needs to be looked at as well.

The ANC said it found the fundamental issue to be what was happening in the interim- the issue was the code of conduct. There needed to be a new culture and mind set within the SABC, or the public perception will not change.

The UPF said found a problem with suggestions made (by the govt) on the neutrality of the SABC. There needed to be something credible done, so that there was public confidence instilled.

The convenor pointed out there needed to be determination of these by the Steering Committee as these could not be finalised at this stage. The Steering Committee needed to be clarified, said the ANC.

The govt was asked whether it was intransigent about restructuring if the SABC Board before March 1993, to which the response was that the SA govt was available to negotiate a method of a new board. It was trying to help by suggesting method of getting other involved.

The Venda govt said it was helpful that there be clarifications before agreements are entered into, or the final document was drafted.

There was consensus by all that the Steering Committee should look at how the present Board of the SABC can be reconstituted as part of interim arrangements.

On the Code of Conduct, Dikwankwetla suggested it could be formulated by CODESA, but there were differences on this point, as some delegates were of the opinion the Code of Conduct could be drawn by the Independent Neutral Body. The Govt said the short term should be looked at, with the SABC as a monitoring mechanism on a short term basis. The ANC saw it as a Code which could govern all commercial and public radio. However the ANC agreed with the government with affirmative action as outlined in its submission.

On the Funding of Political Parties, the SA govt said there was strong pressure for the suspension of this piece of legislation.

The ANC pointed out in response that the electoral law discriminated against parties not represented in parliament. The unregistered parties had to fulfil more stringent electoral requirements if they wanted to register. The clause needed to be repealed.

The ANC further stated the funding of political parties cannot be possible without looking at foreign funding. There were parties that had used state resources, but those that were banned, had to turn to other sources of funding. There was no equality in usage of resources, and the practise of receiving overseas resources was too wide. It should therefore be open to when a new constitutional order was established, with the implications being looked at.

The idea that the state must assist parties must be rejected outright - how will this be done, what

conditions will be attached. The minimal requirement was for regulation of parties, hence the rejection of assistance to parties. There must be full disclosure of funding, with no secret agreements, even when companies/individuals donate large sums (over R100,00), the public needed to know. The state resources cannot be used in the electioneering process, but own party machinery. These are broad principles outlined on the item tabled by the SA govt.

SP informed the meeting the requirement for registration of a political party at the moment was attainment of 500 signatures. Should this be relaxed, then there would be more parties than there are candidates.

The DP said it would support some form of funding of political parties. With regard to auditing, there would need to be a certificate from a registered firm of chartered accountants.

There was consensus after further deliberation that the funding of political parties be suspended until a date six months from the date of the General Election in terms of the provisions of a negotiated new constitution for SA.